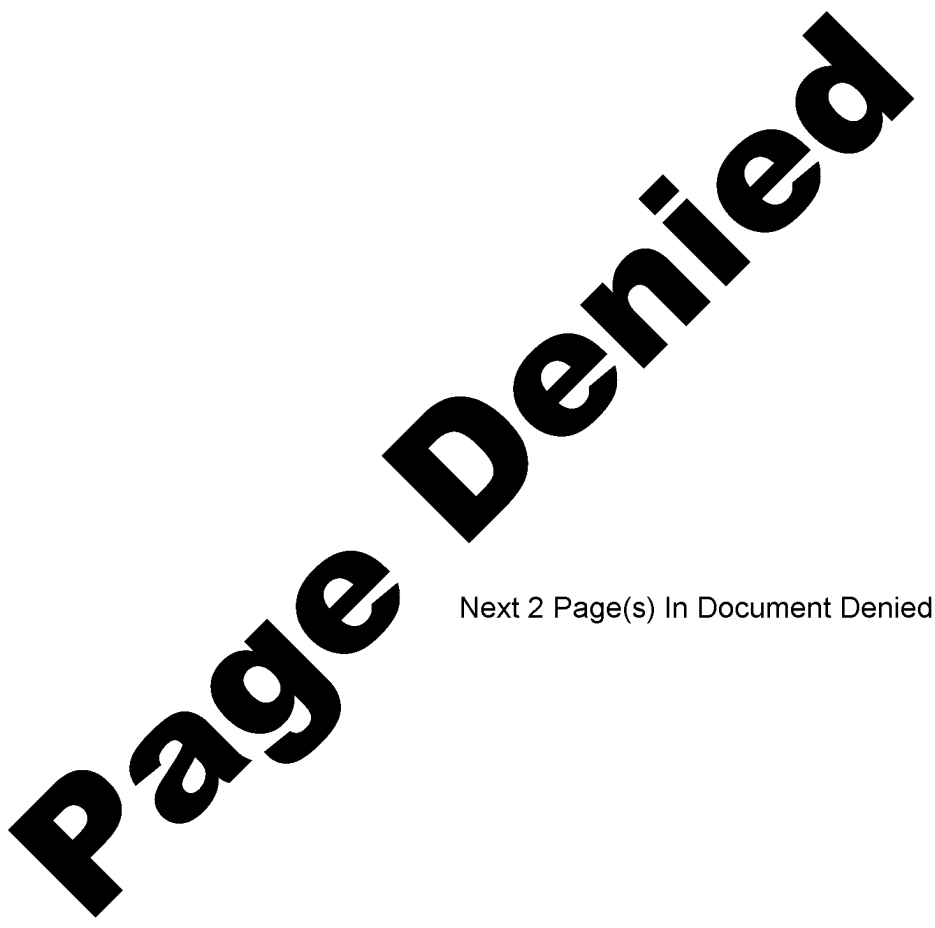

Next 2 Page(s) In Document Denied

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

SES Back Pay Decision

FROM: [redacted]
Executive Officer/OP

EXTENSION [redacted] NO.

DATE 19 March 1985

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. DD/PA&E	19 MAR 1985			
2. [redacted]				Henry,
3.				For your action. D/OP would like you to make an SIS bulletin regarding the SES back pay decision cited in attached. 27 March suspense date.
4.				
5.				[redacted]
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

FORM 1-79 610 USE PREVIOUS EDITIONS

GPO : 1983 O - 411-632

theme, "Dedicated Americans Keeping Our Country Strong." It also is urging all its members to contact their elected representatives to defeat the Reagan proposals.

The AFL-CIO Public Employee Department also has started a campaign to lobby Congress on behalf of federal and postal workers. The National Association of Retired Federal Employees is engaged in a massive letter-writing campaign among its members directed at Congress.

All these things are being done in the battle for public opinion and the hearts and minds of members of Congress. On the other side, the Reagan administration, aided and abetted by the Grace Commission and its Citizens Against Waste group and conservative columnists and editors, is waging a campaign of its own to get its proposals enacted.

UNION URGES BOYCOTT OF GRACE PRODUCTS AND SERVICES—Meanwhile, the National Treasury Employees Union has launched a boycott against W.R. Grace and Co., the huge conglomerate headed by J. Peter Grace, head of the President's Private Sector Survey on Cost Control (the Grace Commission.) Grace has embarked on a personal highly-publicized and heavily financed campaign to gain public support in securing Congressional approval for his proposals, which include sharp cutbacks in federal pay, retirement, sick and annual leave and other benefits. Government union and retiree leaders are worried over the intensity and organization of the Grace Campaign.

NTEU president Robert Tobias, speaking at a demonstration in front of a Grace-owned restaurant in downtown Washington attended by 200 local union leaders, said that Grace has "presented a false picture of federal employees while moving them into exile status." Tobias added, "This is the first of many physical and political demonstrations by angry federal employees."

Targeted are 1,200 Grace-operated apparel and jewelry stores, restaurants, and home furnishing stores in 41 states. Government employees seeking more information can write to Tobias at the NTEU, 1730 K St., NW, Washington, D.C. 20006.

SES BACK PAY DECISION APPEALED AGAIN—The Justice Department has again appealed a lower court decision which would award back payments of up to $5,300 each for thousands of top career senior executive service employees. In its motion to the U.S. Supreme Court, Justice has accused the appeals court of lacking jurisdiction to hear such claims against the government.

At issue is whether top careerists who earn between $61,296 and $72,300 were improperly denied pay raises by Congress when civil service employees were receiving cost-of-living adjustments. *(U.S. v. Squillacote, et. al., U.S. Court of Appeals, 7th Circuit, No. 84-1284.)*

11 Feb - petition for writ of cert. filed - pet. pending

see next page

OSC: OFFICIALS VIOLATED EMPLOYEE'S FREE SPEECH RIGHT—The U.S. Office of Special Counsel has charged two Department of Agriculture officials with committing a prohibited personnel practice when they fired a subordinate employee who had criticized the agency's hiring procedures in a letter to a local newspaper. OSC said their actions violated the employee's constitutional right of free speech.

The supervisors contend that the letter adversely affected the efficiency of the agency, but OSC found no evidence to support their view. OSC recommended that the employee receive back pay and reinstatement, and that his record be cleared of any prejudicial statements concerning the incident.

The two officials could face penalties ranging from removal to debarment from federal service not to exceed five years.

ALMANAC—We now have a sufficient supply of our 1985 Federal Employees' Almanac to guarantee immediate shipment on receipt of order. The price is $3.50 regular book mailing or $4.25 first class. Both prices include postage.

PAY CAPS ALSO LIMIT 'MONRONEY' EFFECT—Higher adjustments to blue collar pay rates resulting from application of the Monroney Amendment are subject to caps on annual pay raises, the U.S. Comptroller General has ruled.

Petition for certiorari filed 2/8/85, by Stephen B. Early of Louisville, Ky.

84-1284 U.S. v. SQUILLACOTE

Appellate jurisdiction—Waiver of objection.

Ruling below (CA7, 747 F2d 432):

Although U.S. Court of Appeals for Federal Circuit normally would have had exclusive jurisdiction under 28 USC 1295(a)(2) of appeal from federal employees' back-pay case, government's petition for rehearing, which presents jurisdictional argument for first time, is denied since case has been fully briefed, argued, and decided; transfer of case in this situation would thwart congressional intent of improving efficiency in appeals process, as expressed in 1982 Federal Courts Improvement Act, and retention is consistent with Act's purposes. (7th Circuit)

Questions presented: Did court of appeals err in refusing to vacate its judgment for want of subject matter jurisdiction, where appellate jurisdiction lies exclusively with U.S. Court of Appeals for Federal Circuit under 28 USC 1295(a)(2), on grounds that government had waived its jurisdictional objection by first presenting it in its rehearing petition and that transferring action after rendering decision on merits would be inefficient?

Petition for certiorari filed 2/11/85, by Rex E. Lee, Sol. Gen., B. Wayne Vance, Acting Asst. Atty. Gen., Charles Fried, Dep. Sol. Gen., Bruce N. Kuhlik, Asst. to Sol. Gen., and William Kanter and Margaret E. Clark, both Dept. of Justice Attys.

Criminal Law and Procedure

84-1050 JOLLEY v. NORTH CAROLINA

Search and seizure—Securing of residence—Plain view.

Ruling below (NC SupCt, 36 CrL 2150, 53 LW 2293):

Once police officer entered home in response to call for help and "secured" apparent crime scene against entry by non-officials, all objects in plain view that officer had probable cause to associate with criminal activity were lawfully seized under Fourth Amendment; therefore, officers who arrived later while crime scene was still secured could examine and remove property in plain view without warrant.

Question presented: Did court below err and decide question dealing with requirements of Fourth Amendment in manner inconsistent with applicable decisions of this Court by upholding validity of warrantless search of defendant's home?

Petition for certiorari filed 12/28/84, by Walter H. Dalton and Hamrick, Bowen, Nanney & Dalton, both of Rutherfordton, N.C.

84-1116 LOUISIANA v. JACKSON

Search and seizure—Investigative detention—Drug courier profile—Probable cause for arrest.

Ruling below (La SupCt, 10/15/84):

Initial encounter between defendant and police officers at airport was lawful investigative stop justified by match between defendant's actions and drug courier profile; however, defendant was effectively under arrest once he was relocated, without his consent, to police office in airport; facts known to officers at that point—that defendant was nervous young black man from Los Angeles who had but one suitcase and did not present identification upon officers' request—did not amount to probable cause for his arrest; accordingly, evidence discovered as result of illegal detention was tainted and should have been suppressed.

Question presented: Did Louisiana Supreme Court's decision to reverse denial of suppression motion contradict Fourth Amendment principles described in U.S. v. Mendenhall, 446 U.S. 544, 48 LW 4575 (1980), and State v. Ossey, 446 So2d 289 (La 1984), when: (1) at time of initial stop defendant had already retrieved his luggage and did not produce any identification or airline ticket; (2) defendant was only questioned briefly at time of initial stop; (3) defendant had not been told that he had to go to office, but had been asked to accompany officers to their upstairs office while they prepared search warrant for suitcase; and (4) defendant stopped agents from typing application for search warrant and consented to search of his suitcase?

Petition for certiorari filed 12/14/84, by John M. Mamoulides, Dist. Atty. for 24th Jud. Dist., and Dorothy A. Pendergast, Asst. Dist. Atty.

84-1118 ATKINS v. TENNESSEE

Refusal to take polygraph examination—Expert testimony —Peremptory jury challenges—Jury instructions.

Ruling below (Tenn CtCrimApp, 7/26/84):

Admission of testimony regarding defendant's failure to take polygraph was harmless error beyond reasonable doubt; admission of expert's opinion testimony that wound was not self-inflicted was within sound discretion of trial court and not precluded by state law; under state criminal procedure law, murder defendant was entitled to only eight peremptory challenges since state did not seek death penalty; if trial court's failure to charge voluntary and involuntary manslaughter was error, it was harmless in view of jury's decision to convict for first-degree murder rather than second-degree murder, upon which they received instructions; there was sufficient evidence upon which rational trier of fact could be convinced beyond reasonable doubt that defendant was guilty of first-degree murder.

Questions presented: (1) Did trial court err in violation of defendant's right against self-incrimination, right to trial by fair and impartial jury, and rights to due process and equal protection by permitting Tennessee Bureau of Investigation agent to read to jury from report stating that defendant refused to take polygraph? (2) Did trial court violate defendant's right to trial by fair and impartial jury and rights to due process and equal protection by allowing state's expert to testify that, in his opinion, injury in question was not self-inflicted? (3) Did trial court violate defendant's rights to due process, equal protection, and trial by fair and impartial jury in restricting counsel for defendant to eight peremptory challenges in prosecution for first-degree murder? (4) Did trial court violate defendant's right to due process, equal protection, and trial by fair and impartial jury in failing to give complete charge to jury of all lesser included offenses in charge of first-degree murder? (5) Was evidence insufficient to support defendant's conviction for first-degree murder, resulting in conviction that violated his rights to due process and equal protection and imprisonment that constitutes involuntary servitude?

Petition for certiorari filed 1/11/85, by Arnold M. Weiss, James D. Causey, A. Wilson Wages, and Alice L. Gallaher, all of Memphis, Tenn.

84-1140 MELIA v. U.S.

Venue—Continuing offenses—Receipt of stolen goods.

Ruling below (CA4, 741 F2d 70):

Under 18 USC 3237(a), defendant who knowingly received at his home in Connecticut goods stolen in North Carolina could be prosecuted in federal district court in North Carolina; application of §3237(a) in this case does not violate either Art. III of Constitution, which guarantees trial in state where crime was committed, or Sixth Amendment's guarantee of jury from state where crime was committed.

Questions presented: (1) Can 18 USC 3237(a), which provides for venue of "continuing" offenses, constitutionally be construed to allow defendant to be retried for receiving stolen goods in district through which stolen goods passed prior to his actual or constructive receipt of, knowledge of, or involvement with those goods? (2) Does §3237(a), as matter of statutory construction, permit defendant to be tried for receiving stolen goods in district through which stolen goods passed prior to his actual or constructive receipt of, knowledge of, or involvement with those goods?

Petition for certiorari filed 12/4/84, by David S. Golub, Leora Herrmann, and Silver, Golub and Sandak, all of Stamford, Conn.

84-1178 FLORIDA v. FASENMYER

Sentencing—Double jeopardy.

Ruling below (Fla SupCt, 457 So2d 1361):

Double Jeopardy Clause forbids trial court to change sentences previously imposed when appellate court reduces reduces severity of other criminal conviction and orders that defendant be resentenced accordingly.

Question presented: When appellate court reduces severity of criminal conviction, is trial court precluded by Double Jeopardy Clause from altering on remand other judgments and sentences not affected by appellant court's judgment, in order to achieve more closely its original sentencing plan?

Petition for certiorari filed 1/18/85, by Jim Smith, Fla. Atty. Gen., and Lawrence A. Kaden, Asst. Atty. Gen.

84-1203 FISCHBACH AND MOORE, INC. v. U.S.

Antitrust prosecutions—Sentencing—Proportionality.

Ruling below (CA3, 12/10/84):

Million dollar fined levied against defendant corporation for Sherman Act violations is not disportionate under standards set forth in Solem v. Helm, 463 U.S. 277, 51 LW 5019 (1983), in light of gravity of offense, nature of punishment imposed on codefendants, and fact that penalty is within range set by Congress.

Question presented: Is sentence that would otherwise be unconstitutionally disproportionate as "excessive fine" when measured by objective criteria of Solem v. Helm rendered constitutional solely because it falls within range of statutorily permissible punishment and because similar sentences were imposed on codefendants in same case?

Petition for certiorari filed 1/25/85, by Gordon B. Spivak, Norman H. Seidler, James R. Eiszner Jr., and Lord, Day & Lord, all of New York, N.Y.

84-1214 CHARLES v. KENTUCKY

Statutes and ordinances—Recidivists—Bifurcated proceedings—Constitutionality.

Ruling below (Ky CtApp, 9/9/83, unpublished):

KRS 532.080, which provides for persistent felony offender proceeding, is not unconstitutional because it requires that enhanced sentence proceeding normally be conducted before same jury that imposed defendant's latest conviction; jury whose functions were to determine whether defendant had status of persistent felony offender and to determine what sentence he should receive was not prejudiced by knowledge of defendant's most recent offense, bribery of official.

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